Petition 13

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1952

No. 334

SAMUEL JAMES GASWAY,
Petitioner,

against

THE STATE OF TEXAS

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

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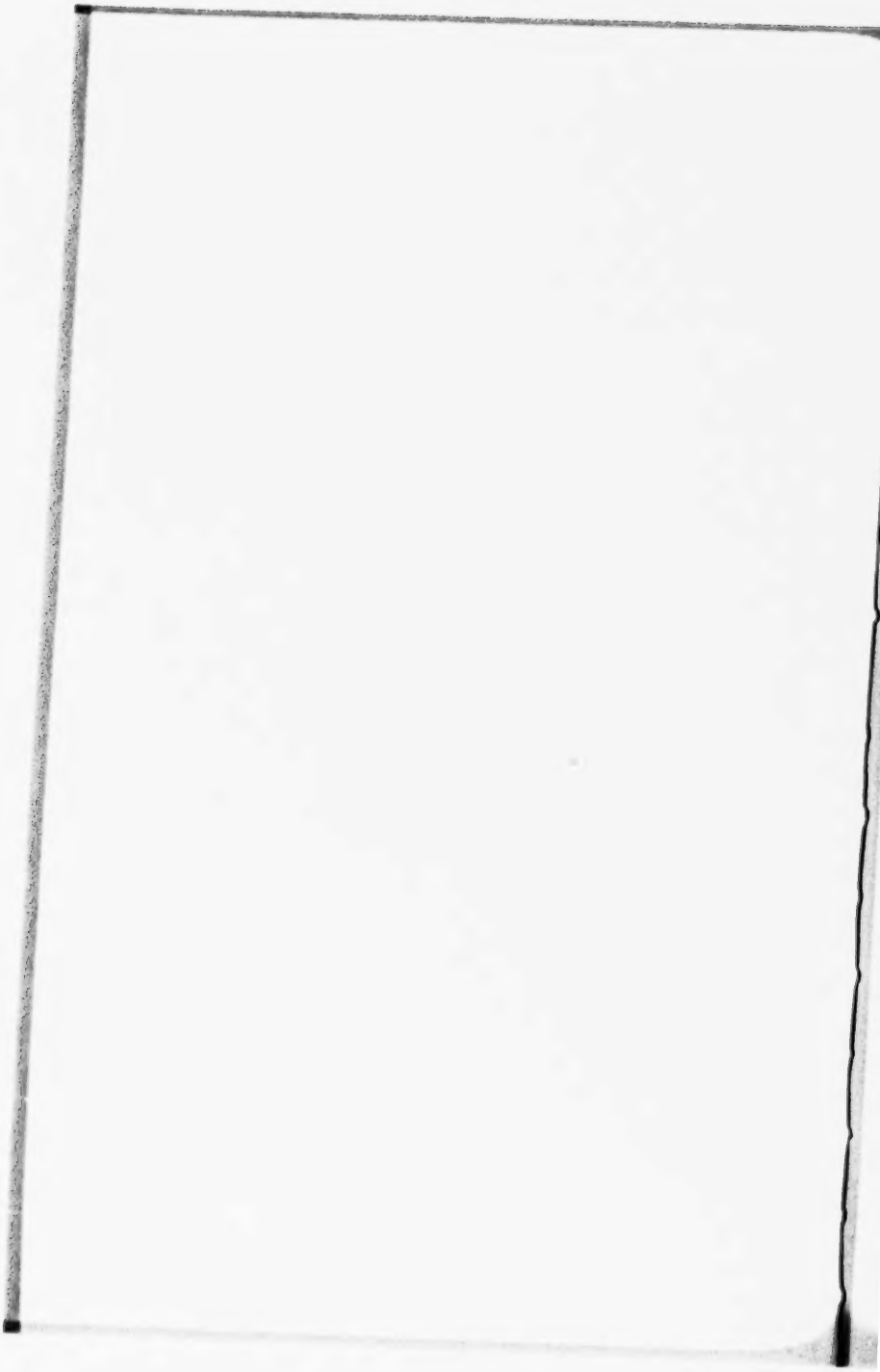
September 10, 1952



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Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Court of Criminal Appeals of the State of Texas, finally affirming a death sentence conviction returned against petitioner in a prosecution for rape.

Opinions Below

The opinions of the Texas Court of Criminal Appeals, are reported in *Gasway v. State*, 248 S. W. 2d 942 (Tex. Crim. App. 1952) (R. 132-139, 141-142).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

A death sentence judgment was entered against petitioner by the District Court of Potter County, Texas, on October 12, 1951 (R. 9-10), and was affirmed by the Texas Court of Criminal Appeals on April 9, 1952 (R. 140). Petitioner's motion for rehearing was overruled by the Court of Criminal Appeals on May 21, 1952 (R. 142).[1]

The Federal question sought to be reviewed was duly raised at the trial in the District Court (R. 86, 103, 105), and in two motions for a new trial (R. 10-11, 12-13). It was then urged on appeal before the Texas Court of Criminal Appeals, and was discussed by that Court in both its initial opinion (R. 135-138) and in its opinion overruling petitioner's moton for rehearing (R. 141).

Constitutional Provision Involved

This case involves the construction and application of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

STATEMENT OF THE CASE

The only question presented to this Court arises from the admission in evidence at the trial of two purported "confessions" over petitioner's objection

[1] By an appropriate order signed on August 13, 1952, the time for filing this petition for a writ of certiorari was extended to September 18, 1952 (R. 147).

(R. 86, 103, 105) that the "confessions" were involuntary and wrung from him by coercive methods which violated his rights guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Petitioner was indicted and convicted for rape and assessed the death penalty (R. 9-10). His conviction followed a trial in which the following facts concerning the extraction of the "confessions" were not only undisputed, but were largely developed from the State's own witnesses. Petitioner here asserts that these admitted facts establish such mental coercion as to constitute a denial of due process. but concedes, as did his counsel at the trial (R. 64), that no element of actual physicial violence was involved.

Petitioner was apprehended without a warrant (R. 80) in Amarillo, Texas, at approximately 2:30 P. M. on Saturday, June 30, 1951, by the local Potter County sheriff's office (R. 21-23, 39). Shortly after petitioner's arrest, petitioner's mother consulted counsel (R. 20) and attempted to see petitioner in the Amarillo jail, where he was being held, but was prevented from seeing him by the sheriff (R. 23, 77). Almost immediately thereafter, petitioner was taken from the Amarillo jail by the sheriff and a deputy and was driven by them in an automobile to Austin, Texas (R. 18), a distance of over 500 miles (R. 87), to undergo questioning and lie detector tests.

During the period prior to his hasty[2] removal to

[2] The undue haste of petitioner's removal from Amarillo is further indicated by the Amarillo sheriff's admission that he knew the lie detector would not be available on the following day (R. 39-40, 79; cf. 53) and that the Amarillo jail was a wholly "safe" place of detention (R. 40).

Austin, petitioner had been questioned in the Amarillo jail by the sheriff (R. 39) and by the district attorney (R. 63, 94-95) concerning a criminal attack made in Amarillo on a nine-year-old girl five days earlier. During this questioning, petitioner was told that he should submit himself to a lie detector examination and sign a written form of consent to allow himself to be questioned while on the lie detector machine (R. 63). In the absence of advice from counsel or friends, he signed the form of consent which was given him (R. 123).

The drive to Austin was made at night, ending at about 5 A. M. Sunday, July 1st (R. 67-68, 81). On arriving in Austin, petitioner was immediately placed in solitary confinement in the local jail (R. 19, 40, 81), with strict orders from the Amarillo sheriff that no one was to be informed that petitioner was in Austin or was being there held (R. 41, 81). Petitioner was then kept in solitary confinement until Monday morning, July 2nd, when he was carried to the office of the Texas Department of Public Safety (R. 41, 68-69), given a tour through the Department's extensive crime detection museum by the Amarillo sheriff and his deputy (R. 41, 50-51, 82), and then subjected to a series of tests and questions on a polygraph lie detector (R. 42, 55-57).

It is not wholly clear from the record to what extent, during this period of incommunicado holding and questioning, suggestive use was made by the sheriff of the possibility of mob violence and by the lie detector operator of the possibility of use and the dangers of sodium penethol truth serum, as testified to by petitioner (R. 109-110, 112). However, the

sheriff did not deny discussing the possibility of mob violence with petitioner and in fact sought to excuse some of his actions by referring to an atmosphere of mob violence (R. 73, 83; cf. 29). The lie detector operator not only refused to deny that he had discussed the use of truth serum with petitioner, but expressly conceded "there was some possibility" he had (R. 120). Also, the sheriff testified that petitioner specifically said just before giving his first "confession": "You can forget that truth serum, I remember all of it and I will tell you all about it" (R. 93).

Petitioner was subjected to seven successive lie detector tests and much questioning during the morning (R. 42, 96-97), and further questioning during the early afternoon (R. 43, 56). Although the results of lie detector tests are considered so unreliable as to be generally inadmissible in evidence,[3] further coercive pressure was brought upon petitioner by his being told the machine showed he was lying (R. 43), which he consistently denied (R. 43). Finally, petitioner succumbed to the inquisitorial tactics of his questioners, after 48 hours of illegal detention. Stating that he would sign what the Amarillo sheriff wanted (R. 110-111), petitioner, in the presence of the sheriff, his deputy and the lie detector operator, signed a statement typewritten by the sheriff (R. 47). This statement was the so-called "first confession" (R. 128-132).

[3] See cases collected in Inbau: *Lie Detection and Criminal Interrogation*, pp. 83-86 (2nd ed. 1948). Inbau estimates the accuracy of lie detector tests at only 75%, *"even when the best available instrument and methods are employed by skilled and competent examiners."* (Emphasis in original.) *Id.* at p. 86.

Petitioner was thereupon again taken at night by automobile, by the Amarillo sheriff and deputy, about 500 miles (R. 87) to Plainview, Texas, where at 2 A. M. on Tuesday morning, July 3rd, he was placed in the Plainview jail for about six hours (R. 71-72, 82), following which he was finally returned by automobile to Amarillo, where he was taken to the private home of a Justice of the Peace (R. 31-32), purportedly to avoid the possibility of mob violence (R. 26, 29). Here, after approximately 67 hours of unlawful detention,[4] a warrant was finally issued for his arrest. Immediately thereafter, "surrounded by a group of police officers" (R. 45; cf. 83-84) and the district attorney (R. 75), prompted by the sheriff (R. 113-114; cf. 111), and without "time or opportunity to seek counsel" (R. 45), the so-called "second confession" was taken from him (R. 45), in essentially the same form as the first one (R. 84, 124-132).

At the trial these two purported "confessions" were admitted in evidence over petitioner's objection that they had been extracted from him by coercive methods while secretly held incommunicado without advice of friends or counsel, in violation of his rights under the Fourteenth Amendment (R. 86, 103, 105). Petitioner took the stand in his own defense and specifically denied the truth of that part of the two

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[4] Petitioner's detention was illegal under Texas law, since he had been arrested without a warrant or order and had not thereafter been taken "immediately" before a magistrate as required by Article 217 of the Texas Code of Criminal Procedure, which reads ". . . the person making the arrest shall immediately take the person arrested before the magistrate who may have ordered the arrest, or before the nearest magistrate where the arrest was made without an order."

"confessions" in which he had purportedly admitted perpetrating the attack on the little girl (R. 106-107). He also explained that he had felt compelled to sign the untrue "confessions" since the compulsive treatment accorded him made it clear to him that he was "going to be forced" (R. 115; cf. 108-117).

QUESTIONS PRESENTED

The basic and important constitutional question here presented involves the scope of petitioner's rights under the due process clause of the Fourteenth Amendment. This question is:

Did the Texas courts, in imposing the death sentence upon petitioner following the admission in evidence of two purported "confessions", violate petitioner's rights under the Fourteenth Amendment, since the "confessions" were extracted from him by the use of coercive methods specifically calculated to produce such confessions?

Because the answer turns on an analysis of the undisputed facts surrounding the extraction of each of the two "confessions", it is appropriate to restate this question in further detail, as follows:

1. As to the first "confession":

Does the constitutional guarantee of due process prohibit a death sentence conviction following the admission in evidence of a purported "confession" extracted from petitioner at a time when he had been held continuously incommunicado, without advice of friends or counsel, following an arrest without warrant and 48 hours of illegal detention, during which period he had been hastily transported at night by police officials, solely for the purpose of questioning,

over 500 miles from the place of his residence and arrest to a distant city where he had been placed in solitary confinement for 28 hours before being subjected to repeated lie detector tests and other forms of questioning and pressure?

2. As to the second "confession":

Does the constitutional guarantee of due process prohibit a death sentence conviction following the admission in evidence of a purported second "confession" extracted from petitioner at a time when the same influences which prompted the giving of the first "confession" were not only still continuing but were actually intensified by a further unbroken incommunicado holding without advice of friends or counsel, to a total of 67 hours, by a second night trip with police officers of about 500 miles, by a period of about 6 hours in a third jail, and by a 70 mile trip with police officers to a private home, where a second purported "confession" substantially similar to the first "confession" was then extracted in the presence of the district attorney and a number of police officials?

REASONS FOR GRANTING THE WRIT

I. The Texas Court of Criminal Appeals, in Affirming the Death Sentence Conviction Imposed upon Petitioner, has Decided a Federal Question of Substance in a way not in Accord with Applicable Decisions of this Court.

In holding that neither of the two "confessions" were extracted from petitioner in violation of his constitutionally protected rights, the Texas Court of

Criminal Appeals has acted in conflict with the decisions of this Court in *Watts v. Indiana*, 338 U. S. 49 (1949), *Ward v. Texas*, 316 U. S. 547 (1942), *Lomax v. Texas*, 313 U. S. 544 (1941), *White v. Texas*, 310 U. S. 530 (1940) and *Chambers v. Florida*, 309 U. S. 227 (1940), all of which recognize the improper coercive effect of various of the non-physical coercive techniques used to bring about petitioner's two purported "confessions". All hold that the subsequent admission in evidence of a "confession" so induced constitutes a violation of the rights of due process guaranteed by the Fourteenth Amendment.

The Texas Court of Criminal Appeals has itself very recently recognized the conflict of its views with those of this Court. In another death sentence case, that of *Golemon v. State*, 247 S. W. 2d 119, 121 (Tex. Crim. App. 1952), now pending before this Court on its miscellaneous docket for review by certiorari, the Texas Court stated, respecting the use of coercive techniques in obtaining confessions:

> "The principal difference in the approach to a determination of the question by each of the courts lies in the fact that this court does not agree that force, coercion and involuntariness are shown by some of the fact situations which have prompted the Supreme Court of the United States to conclude to the contrary. White v. Texas, 310 U. S. 530, 60 S. Ct. 1032, 84 L. Ed. 1342; Lomax v. Texas, 313 U. S. 544, 61 S. Ct. 956, 85 L. Ed. 1511; Ward v. Texas, 316 U. S. 547, 62 S. Ct. 1139, 86 L. Ed. 1663."

Mr. Justice Byrnes, speaking for a unanimous Court in *Ward v. Texas*, 316 U. S. 547, 555 (1942)

clearly summarized some of the coercive factors, which would be sufficient cause for reversal of a conviction based upon a purported "confession" wrung from a defendant by non-physical means:

> "This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. *Any one of these grounds would be sufficient cause for reversal.* All of them are to be found in this case." (Emphasis added.)

It is of course impossible to determine the precise effect of each of the various coercive techniques here utilized, viz.: the incommunicado holding (e.g. R. 23, 41, 71-72, 81), depriving petitioner of the right of advice of friends and counsel (e.g. R. 20, 23, 45), moving him hastily at night from jail to jail over a long distance for the purpose of questioning on a lie detector (e.g. R. 19, 87), the suggestive use of the possibility of mob violence (R. 112) and the use of other forms of non-physical pressures (e.g. R. 41, 45, 109-110, 120), all of which were used in the process of extracting the purported "confessions." However, in cases where life or liberty are placed in jeopardy, no court should speculate as to the exact extent of the pressure produced by the inherently coercive techniques used for the express purpose of producing a "confession." Such speculation is particularly inappropriate in the case at bar where the

death penalty has in fact been n assessed, after the purported "confessions" were u used to destroy the effect of testimony favorable to to petitioner (Cf. R. 13, 15).[5]

As Mr. Justice Frankfurter st stated in his opinion in *Watts v. Indiana*, 338 U. S. 49 49, 53 (1949):

> "A confession by which life ife becomes forfeit must be the expression of free e choice. A statement to be voluntary of course se need not be volunteered. But if it is the proc oduct of sustained pressure by the police it does s not issue from a free choice. When a suspect s speaks because he is overborne, it is immaterial al whether he has been subjected to a physical or r a mental ordeal. Eventual yielding to questionin ing under such circumstances is plainly the prod duct of the suction process of interrogation and therefore the reverse of voluntary."

While this Court has recently ly held that mere illegal detention is not alone suffi icient to constitute a

[5] Also see pp. 1-9 of petitioner's s motion for rehearing before the Texas Court of Criminal A Appeals, which appears in the original typewritten reco ord certified to this Court but which was omitted fro m the printed record pursuant to a stipulation betwee en counsel (R. 145-146). Reference to the unprinted p portions of the certified record is, however, expressly permit itted by the stipulation (R. 146). Of course the existence of a conflict in testimony is not strictly relevant to the federal question of due process raised by this petition, since a reve ersal is required, even with unchallenged evidence adequate to convict, whenever an improperly obtained confession is in fact admitted in evidence. *Malinski v. New York*, 324 4 U. S. 401 (1945); see *Gallegos v. Nebraska*, 342 U. S. 55, 63 (1951). The sharp conflicts in testimony at petitioner's trial serve dramatically to emphasize the inappropriateness of leaving to speculation the precise subjective extent of the coercive pressures to which petitioner was subjected for the express purpose of producing a "confession."

constitutional denial of due process, *Gallegos v. Nebraska*, 342 U. S. 55 (1951), the illegal action of the police, in arresting petitioner without a warrant and in holding him without a preliminary appearance before a magistrate as required by state law, is still recognized by this Court as one of the elements to be considered in determining whether a confession has been obtained under such circumstances that its use violates due process. See *Gallegos v. Nebraska*, 242 U. S. 55, 65 (1951); cf. *Watts v. Indiana*, 338 U. S. 49, 54 (1949).

For the past 15 years, this Court has repeatedly recognized that the use of "confessions" is fraught with great dangers and must be closely controlled to prevent the all too frequent abuses from over-zealous police officers and prosecutors. To hold that the coercive methods here used to produce the two "confessions" which led to petitioner's death sentence are proper, woud result in encouraging further use of subtle third degree police methods in criminal proceedings and lead to an unfortunate erosion of the broad protections and standards heretofore laid down by this Court.

II. The Question Is One of Grave Importance.

Since this is a death sentence case in which petitioner's life has become forfeit as a result of an apparent disregard of the constitutional standards of due process, the grave importance of the question is manifest. However, this question is also of importance far beyond the case sought to be reviewed. It raises the problem of securing uniformity among the states in the recognition of the scope of constitution-

ally protected rights affecting life and liberty, and of clarifying the extent of these protections in cases involving the improper non-physical coercive techniques frequently used in extracting "confessions" from individuals suspected of crime.

CONCLUSION

For the foregoing reasons, it is respectfully urged that this petition for a writ of certiorari to the Court of Criminal Appeals of the State of Texas should be granted.

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September 10, 1952